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9
10 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 E&R VENTURE PARTNERS, LLC, a
California limited liability company,

12 Plaintiff,

13 v.

14 PARK CENTRAL PLAZA 32, LLC, a
revoked Nevada limited liability company;
and DOES I-X,

15 Defendants.
16

Case No.: 2:16-cv-02959-RFB-GWF

**[PROPOSED] CONFIDENTIALITY AND
PROTECTIVE ORDER**

17 This Confidentiality and Protective Order (this "Protective Order") is stipulated to by and
18 between Plaintiff E&R Venture Partners, LLC ("Plaintiff") and Defendant Park Central Plaza 32,
19 LLC ("Defendant") (each referred to herein as a "Party" and collectively, the "Parties").

20 WHEREAS, Defendant entered into a confidential settlement agreement with Nevada State
21 Bank (the "NSB Settlement") in the action styled *Park Central Plaza 32, LLC v. Nevada State*
22 *Bank*, Eighth Judicial District Court, Case No. A-13-677612-B and Supreme Court of Nevada
23 Docket No. 67805.

24 WHEREAS, on April 5, 2017, Plaintiff filed a "Motion to Compel Defendant to Disclose
25 Information and Documentation Concerning the NSB Settlement" [ECF No. 25] (the "Motion to
26 Compel").

27 WHEREAS, on May 2, 2017, the Court entered an Order [ECF No. 36] granting the Motion
28 to Compel, denying Defendant's Motion for Protective Order [ECF No. 29], and directing

1 Defendant to produce the NSB Settlement document and respond to Plaintiff's written discovery
2 concerning the NSB Settlement, subject to a protective order as described in the Order.

3 NOW THEREFORE, the Parties, by and through their undersigned counsel, hereby
4 stipulate and agree, subject to the Court's approval, as follows:

5 **I. DEFINITIONS**

6 The following definitions apply to this Protective Order:

7 1. Party. Any Party to this action, including all of its officers, directors, employees,
8 consultants, Experts (as defined below), and Outside Counsel (as defined below).

9 2. Disclosure or Discovery Material. All items or information, regardless of the
10 medium or manner generated, stored, or maintained (including, among other things, testimony,
11 transcripts, or tangible things) that are produced or generated in disclosures or responses to
12 discovery in this matter.

13 3. Confidential Information or Items. Information (regardless of how generated,
14 stored or maintained) or tangible things that the Designating Party has a good-faith basis for
15 believing contains information that: (a) is confidential under federal or state law or regulations; or
16 (b) contains criminal history information, personal information regarding individuals including
17 Social Security Numbers, dates of birth and information which a person would have a reasonable
18 expectation of privacy, and other sensitive financial or professional information that is generally
19 unavailable to the public and that, if made available to the public, may be injurious to that Party's
20 personal, financial, or professional interests. Confidential Information shall include the document
21 memorializing the NSB Settlement and Defendant's answers and responses to written discovery
22 and deposition inquiries and responses concerning the same. Further, Confidential Information
23 shall also include any information protected from disclosure under *Donrey v. Bradshaw*, 106 Nev.
24 630 (1990), or an official or executive information privilege. Confidential Information shall also
25 include employee information, employee medical information, and employee disciplinary action,
26 including any internal investigation concerning employee actions.

27 4. Receiving Party. A Party that receives Disclosure or Discovery Material or
28 Confidential Information from a Producing Party.

1 5. Producing Party. A Party or third-party that produces Disclosure or Discovery
2 Material or Confidential Information in this action.

3 6. Designating Party. A Party or third-party that designates information or items that
4 it produces in disclosures or in responses to discovery as "Confidential".

5 7. Protected Material. Any Disclosure or Discovery Material or Confidential
6 Information that is designated as "Confidential."

7 8. Outside Counsel. Attorneys who are not employees of a Party but who are retained
8 to represent or advise a Party in this action.

9 9. In-House Counsel. Attorneys who are employees of a Party.

10 10. Counsel (without qualifier). Outside Counsel and In-House Counsel (as well as their
11 support staff).

12 11. Expert. A person with specialized knowledge or experience in a matter pertinent to
13 the litigation retained by a Party or its Counsel to serve as an expert witness or as a consultant in
14 this action. This definition includes, but is not limited to, a professional jury or trial consultant
15 retained in connection with this action.

16 12. Professional Vendor. Person or entity that provides litigation support services (*e.g.*,
17 photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing,
18 retrieving data in any form or medium, etc.) and its employees and subcontractors.

19 13. The use of the singular form of any word includes the plural, and vice versa.

20 **II. SCOPE**

21 The protection conferred by this Protective Order covers not only Protected Material, but
22 also any information copied or extracted therefrom, as well as all copies excerpts, summaries, or
23 compilations thereof, testimony, conversations, or presentations by Parties or Counsel to or in Court
24 or in other settings that might reveal Protected Material.

25 **III. DURATION**

26 Even after the termination of this action, the confidentiality obligations imposed by this
27 Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a
28 court order otherwise directs.

1 **IV. DESIGNATING PROTECTED MATERIAL**

2 1. Manner and Timing of Designations. Except as otherwise provided herein, or as
3 otherwise ordered, material that qualifies for protection under this Protective Order must be clearly
4 designated before it is disclosed or produced. Designations in conformity with this Protective Order
5 require the following:

6 a. For information in documentary form: The Producing Party shall affix the
7 legend "Confidential" on each page that contains Protected Material. If only a portion or portions
8 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate makings in the margins or redacting protected
10 portions). A Producing Party that makes original documents or materials available for inspection
11 need not designate them for protection until after the inspecting Party has indicated which material
12 it would like copied and produced. During the inspection and before the designation, all of the
13 material made available for inspection shall be deemed "Confidential". After the inspecting Party
14 has identified the documents it wants copied and produced, the Producing Party must determine
15 which documents, or portions thereof, qualify for protection under this Protective Order, and,
16 before producing the specified documents, the Producing Party must affix the appropriate legend
17 on each page that contains Protected Material. If only a portion or portions of the material on a
18 page qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriated markings in the margins or by redacting protected
20 portions).

21 b. For testimony given in deposition or in other pretrial or trial proceedings:
22 Before the close of the deposition, hearing, or other proceeding, the Party or non-party offering or
23 sponsoring the testimony shall identify on the record all protected testimony and further specify
24 any portions of the testimony that qualify as "Confidential". When it is impractical to identify
25 separately each portion of testimony that is entitled to protection, the Party or non-party that
26 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
27 proceeding is concluded) a right to have up to thirty (30) days to identify the specific portions or
28 the testimony as to which protection is sought. Only those portions of the testimony that are

1 appropriately designated for protection under the standards set forth herein within the thirty (30)
2 days shall be covered by the provisions of this Protective Order. Upon request of a Designating
3 Party, transcript pages containing Protected Material must be separately bound by the court
4 reporter, who must affix to the top of each such page the legend "Confidential" as instructed by the
5 Party or non-party offering or sponsoring the witness or presenting the testimony.

6 c. For information produced in some form other than documentary, and for any
7 other tangible items: The Producing Party shall affix in a prominent place on the exterior of the
8 container or containers in which the information or item is stored the legend "Confidential". If only
9 portions of the information or item warrant protection, the Producing Party, to the extent
10 practicable, shall identify the protected portions.

11 2. Inadvertent Failure to Designate. Inadvertent failure to identify documents or things
12 as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any otherwise
13 valid claim for protection, provided that the provisions of this paragraph are satisfied. If the
14 Designating Party discovers that information should have been but was not designated
15 "Confidential" or if the Designating Party receives notice that would enable the Designating Party
16 to learn that it has disclosed such information, the Designating Party must immediately notify all
17 other Parties. In such event, within thirty (30) days of notifying all other Parties, the Designating
18 Party must also provide copies of the "Confidential" information designated in accordance with this
19 Protective Order. After receipt of such re-designated information, the "Confidential" information
20 shall be treated as required by this Protective Order, and the Receiving Party shall promptly, but in
21 no event more than fourteen (14) calendar days from the receipt of the re-designated information,
22 return to the Designating Party all previously produced copies of the same unlegended documents
23 or things. The Designating Party and the Parties may agree to alternative means. The Receiving
24 Party shall receive no liability, under this Protective Order or otherwise, for any disclosure of
25 information contained in unlegended documents or things occurring before the Receiving Party was
26 placed on notice of the Designating Party's claims of confidentiality.

1 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 1. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
3 confidentiality designation must do so in good faith and must begin the process by conferring with
4 counsel for the Designating Party. The challenging Party must give the Designating Party an
5 opportunity of not less than ten (10) calendar days to review the designated material, to reconsider
6 the circumstances, and, if no change in the designations is offered, to explain in writing the basis
7 for the confidentiality designation.

8 2. Judicial Intervention. A Party that elects to challenge a confidentiality designation
9 after considering the justification offered by the Designating Party may file and serve a motion that
10 identifies the challenged material and sets forth in detail the basis for the challenge. Until the Court
11 rules on the challenge, all Parties shall continue to afford the material in question the level of
12 protection to which it is entitled under the Designating Party's designation.

13 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
15 produced by another Party or by a third-party in connection with this case solely for the limited
16 purposes of prosecuting, defending, attempting to settle, or settling this action. Such Protected
17 Material may be disclosed only to the categories of persons and under the conditions described in
18 this Protective Order. Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons authorized under
20 this Protective Order.

21 2. Disclosure of "Confidential" Information or Items. Unless otherwise ordered by the
22 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated "Confidential" only to:

24 a. The Parties to this action and the Receiving Party's Outside Counsel of
25 record in this action, as well as employees of said Counsel to whom it is reasonably necessary to
26 disclose the information for this action. Outside Counsel shall be responsible for advising all of
27 their staff of the existence of, and their confidentiality obligations under, this Protective Order, and
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1 shall be responsible for any non-compliance with this Protective Order by members of their staff
2 that have not signed the "Agreement to be bound by Protective Order" (Exhibit A);

3 b. The officers, directors, and employees of the Receiving Party to whom
4 disclosure is reasonably necessary for this action and who have signed or have agreed under oath
5 and on the record to be bound by the "Agreement to be bound by Protective Order" (Exhibit A);

6 c. Experts of the Receiving Party to whom disclosure is reasonably necessary
7 for this action and who have signed or have agreed under oath and on the record to be bound by the
8 "Agreement to be bound by Protective Order" (Exhibit A);

9 d. The Court and its personnel;

10 e. Court reporters, their staffs, and Professional Vendors to whom disclosure is
11 reasonably necessary for this action;

12 f. During their depositions or at trial, witnesses in the action to whom
13 disclosure is reasonably necessary. Witnesses will not be permitted to retain copies of Protected
14 Material unless they have signed or agreed under oath and on the record to be bound by the
15 "Agreement to be bound by Protective Order" (Exhibit A). Upon request of a Designating Party,
16 pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
17 must be separately bound by the court reporter and may not be disclosed to anyone except as
18 permitted under this Protective Order; and

19 g. The author of the document or the original source of the information and
20 recipients or addressees in the normal course of business.

21 Notwithstanding the preceding of this paragraph VI(2), a Party that has produced its, his or
22 her own Protected Material may disclose such Protected Material to any persons, with or without
23 any conditions placed upon such disclosure, as the Party deems appropriate.

24 3. Trial and Dispositive Motion Disclosure. For the purpose of trial and/or dispositive
25 motions, the Parties acknowledge that a "strong presumption in favor of access" exists. A Party
26 seeking to seal a judicial record at trial and/or the dispositive motions stage bears the burden of
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1 establishing "compelling reasons" by "articulating compelling reasons supported by specific factual
2 findings," that outweigh the public policies favoring disclosure.¹

3 4. Disclosure of Possession of Confidential Information. All persons described in
4 paragraph VI above shall not under any circumstances sell, offer for sale, advertise, or publicize
5 either the Confidential Information or the fact that such persons have obtained Confidential
6 Information.

7 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
8 **OTHER LITIGATION**

9 If a Receiving Party is served with a subpoena or a court order issued in other litigation that
10 would compel disclosure of any information or items designated in this action as "Confidential",
11 the Receiving Party must so notify the Designating Party, in writing (by fax or email if possible)
12 immediately and in no event more than seven (7) calendar days after receiving the subpoena or
13 court order. Such notification must include a copy of the subpoena or court order. The Receiving
14 Party also must within ten (10) calendar days inform in writing the party who caused the subpoena
15 or court order to issue in the other litigation that some or all the material covered by the subpoena
16 or court order is the subject of this Protective Order and deliver to such party a copy of this
17 Protective Order. The Designating Party shall bear the burdens and the expenses of seeking
18 protection in that court of its Protected Material – and nothing in these provisions should be
19 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
20 directive from another court. Once notice is given, and five (5) business days have elapsed, the
21 Receiving Party shall have no further liability for disclosure pursuant to a subpoena or court order.

22 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
24 Material to any person or in any circumstance not authorized under this Protective Order, the
25 Receiving Party must immediately and within not more than seven (7) calendar days: (a) notify in
26 writing (using best efforts to use email or fax) the Designating Party of the unauthorized
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28 ¹ See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

1 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
2 person or persons to whom unauthorized disclosures were made of all the terms of the Protective
3 Order, and (d) request such person or persons to execute the " Agreement to be bound by Protective
4 Order" (Exhibit A). The Receiving Party shall promptly notify the Designating Party of the results
5 of its efforts with regards to (b), (c), and (d) herein. After a good faith meet and confer effort to
6 resolve any remaining disputes concerning compliance with this paragraph, Designating Party may
7 seek relief from this Court for non-compliance with this provision. Said relief may include, but is
8 not limited to, preclusion of the Receiving Party's use in this litigation of the Protected Material
9 that was disclosed contrary to this Protective Order, or any other sanction deemed appropriate by
10 the Court.

11 **IX. PUBLICLY AVAILABLE OR PREVIOUSLY POSSESSED INFORMATION**

12 The restrictions in the preceding paragraphs regarding disclosure of Protected Material do
13 not and shall not apply to information or material that: (1) was, is, or becomes public knowledge in
14 a manner other than by violation of this Protective Order; (2) is acquired by the Receiving Party
15 from a third-party having the right to disclose such information or material; or (3) was lawfully
16 possessed by the Receiving Party before the date of this Protective Order. The Designating Party
17 shall act in good faith to notify the Receiving Party of any change in circumstances that renders
18 Confidential Information or Items no longer "Confidential" within a reasonable time period after
19 the change becomes known to the Designating Party.

20 **X. FILING PROTECTED MATERIAL**

21 With respect to pleadings and non-dispositive motions, Protected Material or information
22 derived therefrom is included with, or the contents of such a document are disclosed in, any
23 documents filed with the Clerk or this Court or any other court, the filing Party shall file said
24 document under seal. Unless otherwise agreed by the Parties to permit service by some other means
25 such as by email or facsimile, copies of any pleading, brief or other document containing Protected
26 Material that is served on opposing counsel shall be delivered in a sealed envelope stamped:

27 **CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER**

28 and shall be treated in accordance with the provisions of this Protective Order. Subject to the

1 Court's convenience and needs, all material files in this fashion will be kept under seal by the Clerk
2 of the Court until further order from the Court.

3 **XI. FINAL DISPOSITION**

4 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
5 calendar days of a written request, after the final termination of this action, each Receiving Party
6 must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
7 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing
8 or capturing any of the Protected Material. With permission in writing from the Designating Party,
9 the Receiving Party may destroy some or all of the Protected Material instead of returning it.
10 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
11 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
12 by the thirty (30) calendar day deadline that identifies (by category, where appropriate) all the
13 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
14 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
15 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
16 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
17 attorney work product, even if such materials contain Protected Material. Any such archival copies
18 that contain or constitute Protected Material remain subject to this Protective Order as set forth
19 herein. In the event of an appeal, "Final Disposition" shall not occur until the conclusion of all
20 appeals.

21 **XII. ADDITIONAL PROVISIONS**

22 1. Modification. The Parties may modify this Protective Order by written agreement,
23 subject to approval by the Court. The Court may modify this Protective Order.

24 2. Right to Assert Other Objections. This Protective Order does not affect or waive
25 any right that any Party otherwise would have to object to disclosing or producing any information
26 or item on any ground not addressed in this Protective Order. Similarly, this Protective Order does
27 not affect or waive any Party's right to object on any ground to use in evidence any of the material
28 covered by this Protective Order.

1 3. Privileges Not Waived. This Protective Order does not affect or waive any
2 applicable privilege or work product protection, or affect the ability of a Producing Party to seek
3 relief for an inadvertent disclosure of material protected by privilege or work product protection.

4 4. Third Party Protections. Any witness or other person, firm, or entity from which
5 discovery is sought may be informed of and may obtain the protection of this Protective Order by
6 written notice to the Parties' respective counsel or by oral notice at the time of any deposition or
7 similar proceeding.

8 5. Retention of Completed "Agreement to be bound by Protective Order" Forms
9 (Exhibit A). Completed "Agreement to be bound by Protective Order" forms (Exhibit A) ("Form")
10 shall be maintained by the Party that obtained the completed Form pursuant to this Protective Order.
11 The Party retaining the Form shall produce the Form to resolve any good faith challenge by a Party
12 or Designating Party or dispute concerning whether a person who is obligated under this Protective
13 Order to complete the Form did so properly and complied with the representations in the Form and
14 this Protective Order. If the Parties are unable to resolve any such disputes or

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challenges through a good faith meet and confer process, the challenging Party or Designating Party may seek appropriate relief from this Court.

DATED this 9th day of May, 2017.

PETERSON BAKER, PLLC

JK LEGAL & CONSULTING, LLC

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*Attorneys for Defendant Park Central Plaza
32, LLC*

ORDER

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

DATE: May 17, 2017

Respectfully submitted by:

PETERSON BAKER, PLLC

By: /s/ Tamara Beatty Peterson
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INDEX OF EXHIBITS

| Exhibit Number | Title |
|---------------------------|---|
| A. | Agreement to be bound by Protective Order |

EXHIBIT A

Agreement to be bound by Protective Order

EXHIBIT A

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, have read in its entirety and understand the Protective Order that was issued by the United States District Court, for the District of Nevada on _____, 2017, in the case of *E&R Venture Partners, LLC v. Park Central Plaza 32, LLC* Case No. 2:16-cv-02959-RFB-GWF. I agree to comply with and to be bound by all terms of the Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Protective Order to any person or entity, except in strict compliance with the provisions of the Protective Order. Further, I solemnly promise that I will not offer to sell, advertise or publicize that I have obtained any Protected Material subject to the Protective Order.

At the conclusion of this matter, I will return all Protected Material that came into my possession from counsel for the party from whom I received the Protected Material, or I will destroy those materials. I understand that any Confidential Information contained within any summaries of Protected Material shall remain protected pursuant to the terms of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court, for the District of Nevada for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this action.

I certify under the penalty of perjury that the foregoing is true and correct.

Date: _____

City and State where signed: _____

Printed name: _____

Address: _____

Signature: _____